

**TO BE USED FOR CUSTOMERS WITH DENTAL PROGRAMS NOT
REGULATED BY ERISA WHERE METLIFE ISSUES BENEFIT
PAYMENTS FROM A BANK ACCOUNT FUNDED BY THE CUSTOMER
AND METLIFE OR CUSTOMER PERFORMS A REVIEW ON APPEAL**

DENTAL CARE BENEFITS ADMINISTRATIVE SERVICES AGREEMENT

PARTIES:

**Metropolitan Life Insurance
Company**

Sample Customer,
as Program Sponsor and Program Administrator

The material that follows is being furnished for illustrative purposes only. Actual contractual material used in administering the plan may be adjusted to reflect specific plan requirements.

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ADMINISTRATIVE SERVICES AGREEMENT

This Agreement is effective [EFFECTIVE DATE] and is entered into by and among:

Metropolitan Life Insurance Company

200 Park Avenue
New York, New York 10166

Sample Customer, as Program Sponsor and Program Administrator

Customer's Address
City, State, Zip

RECITALS

1. Sample Customer has established and sponsors and maintains an employee welfare benefit program to provide certain welfare benefits, including dental care benefits, to specified current and former employees.
2. Since a major component of the welfare benefit program will include the use of Participating Dental Provider (PDP) Networks, Sample Customer requires the expertise of a knowledgeable administrator of Claims and Participating Provider Network services.
3. Metropolitan Life Insurance Company (MetLife) represents that it is a knowledgeable and experienced administrator of Claims and Participating Provider Network services and understands that the accurate and efficient administration of the welfare benefit program and provider networks is necessary for the welfare benefit program to achieve quality and cost objectives.
4. Sample Customer wants to contract with MetLife to render certain services necessary in the administration of the welfare benefit program and MetLife is willing to provide these services as described in this Agreement.

Therefore, it is agreed as follows:

Section 1: DEFINITIONS

A. **General Definitions:** For the purposes of this Agreement the following terms shall have the following meanings:

1. **"Agreement"** means this Administrative Services Agreement and all Appendices annexed to this Administrative Services Agreement. All Appendices are deemed to be incorporated by reference into this Agreement.
2. **"Claim(s)"** means a request for payment of Program Benefits by a Participant or a Participating Provider or Non-Participating Provider as assignee of a Participant, on account of dental care services or supplies which have already been rendered or provided to a Participant.
3. **"Confidential Business Information"** means statistical and other information of a Party that is identified by the Party as commercially valuable, confidential, proprietary, or trade secret. Confidential Business Information does not include any Customer's PHI as such term is defined in Section 10 of this Agreement. The rights and obligations with respect to Customer's PHI are fully described in **Section 10: Personal Health Information**.
4. **"Contract Period"** means the period beginning on [Effective Date – Month and Day] of a calendar year and ending on the next following [date ending complete year from Effective Date – Month and Day]. A **"Subsequent"** Contract Period means any Contract Period following the First Contract Period. In no event will a Contract Period include any period of time beyond the date of termination of this Agreement.
5. **"Covenant(s)"** means a promise or promises by one Party to the other Party that the promising Party will and shall undertake to do that which is promised, in the manner described in this Agreement.
6. **"Covered Services"** means those services and supplies for which Program Benefits are provided under and subject to the terms and conditions of the Program.
7. **"Customer"** means Sample Customer, its directors, trustees, officers, employees, agents, or committees to whom authority to act on its behalf with respect to the Program or this Agreement has been delegated (not including MetLife or Standard Subcontractors).
8. **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.
9. **"MetLife"** means Metropolitan Life Insurance Company (MetLife), its directors, officers, employees, agents, committees, affiliates, subsidiaries, and/or Standard Subcontractors to whom authority to act on MetLife's behalf in connection with the Program or this Agreement has been delegated.
10. **"Named Claims Review Fiduciary"** means the individual or entity designated by the Program Administrator as the fiduciary charged with the discretionary authority for determining eligibility for Program Benefits and for interpretation of Program terms in connection with the full and fair review of Claims which have been denied in whole or in part.
11. **"Network Service Area(s)"** means a Zip Code Area in which MetLife administers a Participating Provider Network.
12. **"Non-Participating Provider(s)"** means a dental care provider other than a Participating Provider.
13. **"Participant(s)"** means a current or former employee of Sample Customer, and his or her respective dependents, who is eligible and enrolled for coverage under and subject to the Program's terms.

14. **"Participating Provider(s)"** means a dental care provider who is an independent contractor who, by entering into a contract with MetLife or a Standard or Special Subcontractor if any, has agreed among other things, to render and in certain cases to also arrange for and coordinate the services for which in-network benefits are available; comply with the Program's applicable managed care requirements; and accept negotiated or other legally binding fees as payment in full for Covered Services.
15. **"Participating Provider Network(s)"** means those Participating Providers who provide services within a particular Network Service Area.
16. **"Party(ies)"** means (a) signatory(ies) to this Agreement.
17. **"Program(s)"** means Customer's Employee Welfare Benefit Program which Sample Customer represents is Self-Funded and is not an 'Employee Welfare Benefit Plan' as this term is defined under ERISA.
18. **"Program Administrator"** shall refer to the current or succeeding person, committee, partnership, or other entity designated as such by the terms of the instrument under which the Program is operated, or by law.
19. **"Program Benefits"** means, collectively, all benefits of whatever nature payable to a Participant, Participating Provider, or Non-Participating Provider, including any benefits paid pursuant to capitated rates rather than on a fee-for-service basis, under and subject to the terms and conditions of the Program.
20. **"Preferred Dentist Program" or "PDP"** means the network program under which Program Participants may receive more favorable Program Benefits or incur smaller out-of-pocket co-payments if their covered dental services are provided by dentists who have become Participating Providers.
21. **"Provider(s)"** means any dental care provider who renders dental care services or provides dental care supplies to a Participant.
22. **"Represent(s)"** means that the Party is making a statement of fact or circumstances at the time of the execution of this Agreement with the knowledge and understanding that such statement was influential in bringing about this Agreement.
23. **"Self-Funded"** means that Program Benefits are funded by Customer's own funds and employee contributions and not pursuant to any type of group indemnity insurance.
24. **"Special Subcontractor(s)"** means any person or entity, including an association, organization, partnership, or corporation with which MetLife has, at Customer's specific request, contracted with in order to provide certain services that MetLife has agreed to provide under this Agreement. As of the date of this Agreement, there are no Special Subcontractors.
25. **"Standard Subcontractor(s)"** means any person or entity, including an association, organization, partnership, or corporation with which MetLife has chosen on its own behalf to contract with to provide certain services that MetLife agrees to provide under administrative service agreements including, but not limited to, this Agreement.
26. **"Program Description(s)" or "PD"** means the description of the Dental Program provided by Customer to Customer's employees.
27. **"Zip Code Area(s)"** means the geographical area described by any five-digit zip code established by the U.S. Postal Service that the Parties agree will be identified as, or as a part of, a Network Service Area.

- B. Specific Definitions:** Certain terms having application only to specific provisions of this Agreement are defined in those specific provisions.

Section 2: CONSULTING, ACTUARIAL, TECHNICAL, AND PROVIDER NETWORK SERVICES

A. Advisory Services: MetLife will provide advice to Customer when requested to do so regarding:

1. Program design and revisions, including questions regarding eligibility for participation and effective dates and cessation of coverage.
2. Program administration including questions regarding taxes and Covered Services.
3. Completion of standard forms.
4. Program documents including the PD and other material intended for distribution to Participants.

B. Estimates of Costs and Liabilities:

1. **Estimates of Program Benefit Costs and Fees:** MetLife will provide Customer with an annual estimate, for budget purposes, of Program Benefit costs and MetLife's Service Fees and other charges for Subsequent Contract Periods.
2. **Estimates of Costs of Proposed Program Changes:** MetLife will provide Customer with estimates of Program Benefit cost calculations for proposed changes in the Program.
3. **Estimates of Open and Unreported Claim Liability:** MetLife will provide Customer with estimates of open and unreported Claim liability following the close of each Contract Period.

C. Standard Administrative Forms: MetLife will provide Customer with standard forms which may be used for administration of the Program, including those necessary to process enrollments in the Program, designations of dependents, etc. Customer will not use non-standard administrative forms without first consulting with MetLife.

D. Standard Administrative Manuals: MetLife will prepare, update, and provide Customer with standard manuals to assist in program administration.

E. Program Benefit Payment Reporting: MetLife will provide a report to Customer with respect to Program Benefits paid as specified in **Section 4: Report Services, Paragraph A.**

F. Establishing Banking Arrangements: MetLife will assist Customer in establishing banking arrangements for the payment of Program Benefits.

G. Customer Obligations: Customer shall have the following obligations in addition to its other obligations under this Agreement:

1. **Final Authority for the Program:** Except as otherwise provided in this Agreement, Customer retains all final authority and responsibility for the Program and its operation and for compliance with any and all applicable laws and regulations relating thereto.
2. **Furnish Inforce Information:** Customer will provide MetLife with data sufficient to enable MetLife to obtain access to or maintain accurate Participant inforce records. Such data shall be provided to MetLife no less frequently than monthly on electronic tape or such other means agreed to by MetLife, in formats established by MetLife. MetLife will maintain Participant inforce records based on and in reliance upon data furnished to it by Customer.
3. **Furnish Financial Information:** On MetLife's request, Customer will furnish information about its financial condition reasonably required by MetLife to enable it to determine the ability of Customer to meet its financial obligations under this Agreement.

4. **Advise Participants of MetLife's Role:** Prior to the effective date of this Agreement, Customer will give Participants written notice, in a form approved by MetLife, that MetLife will be processing Claims under the Program and that indicates the manner in which such Claims should be filed. If, prior to the effective date of this Agreement, the benefits of the Program were insured, this written notice will also indicate that Customer has assumed liability for payment of Program Benefits.
5. **Furnish Information of Participant Complaints:** Customer will advise MetLife of any complaints of which Customer is aware that were lodged by Participants regarding the services provided by MetLife.

H. Preferred Dentist Program Network Services: The Parties understand and agree that MetLife is responsible for the establishment and maintenance of Participating Provider Networks under the Preferred Dentist Program (PDP), and that these Participating Provider Networks have been established and will be maintained by MetLife for the benefit of employee welfare benefit programs which have contracted with MetLife to provide the same services. MetLife understands and agrees that Customer has selected MetLife to render Participating Provider Network services based upon the following Covenants and Representations:

1. Selection and Retention Program:

- a. MetLife Covenants that it will select dental care professionals to become Participating Providers in accordance with the MetLife PDP Provider Selection and Retention Program.
 - b. MetLife represents that its PDP Participating Providers have been selected in accordance with MetLife's Provider Selection and Retention Program in effect at the time of their selection. Such Provider Selection and Retention Program has been modified from time to time.
 - c. The Parties understand and agree that the Provider Selection and Retention Program may change from time to time without advance notice from MetLife to Customer based on changes in circumstances. However, MetLife will make every reasonable effort to provide Customer with reasonable advance notice of changes in that Program which would materially affect the nature or extent of services provided by MetLife in connection with the Agreement or Program.
 - d. Upon request, MetLife will provide a copy of its then current description of MetLife's PDP Provider Selection and Retention Program to Customer.
 - e. MetLife Covenants that it will determine whether to retain Participating Providers in accordance with MetLife's then current PDP Provider Selection and Retention Program and in accordance with the terms of MetLife's provider contracts.
2. **Participating Provider Directory:** MetLife will maintain a toll free phone line that will allow any Participant to order at any time a directory listing Participating Providers in the area where Participants reside or work.
 3. **Changes in Network Composition:** Subject to reasonable business practices and the terms and conditions of individual Participating Provider contracts, MetLife Covenants that it will notify Customer and affected Participants sixty (60) days before any material change in the composition of any Participating Provider Network where such change is detrimental to Program Participants.
 4. **Network Service Areas:** The Participating Provider Network services described in this Section will be provided in various Zip Code Areas. MetLife will provide Customer with a listing of the Zip Code Areas applicable to the Program.
 5. **Administration of PDP Network Program:** MetLife Covenants that it will administer the Participating Provider Network program under the PDP in accordance with the Program and in accordance with the terms of this Section as it applies to such program.

Section 3: CLAIM PROCESSING SERVICES

- A. Standard Claim Processing Services:** With respect to dental coverage, Customer and MetLife acknowledge that Customer has delegated to MetLife and MetLife has agreed to assume responsibility and discretionary authority for determining eligibility for benefits and construing Program terms, subject to review by the Named Claims Review Fiduciary, as follows:
- 1. Initial Claim Evaluation:** MetLife will conduct an initial evaluation of Claims to determine whether the services and supplies are Covered Services. When deemed appropriate by MetLife, Claims evaluation will include a review by dental professionals employed or retained by MetLife.
 - 2. Administration of COB:** MetLife will administer the Program's coordination of benefits (COB) provisions. It is understood and agreed the Program will use MetLife's standard order of benefit determination provisions.
 - 3. Determination of Benefits:** MetLife will compute and verify Program Benefit amounts and prepare and provide to Participants or Participating and Non-Participating Providers, when appropriate, statements reflecting the amount of Program Benefits payable and the reasons why a Claim has been denied in whole or in part.
 - 4. Payment of Benefits:** MetLife will draw drafts and checks or initiate electronic fund transfers (EFTs) in payment of Program Benefits.
- B. Verification of Coverage:** MetLife will establish the process for verification of coverage and Claim submission.
- C. Standard Claim Forms:** MetLife will provide Customer with standard forms that may be used for Claim submission and processing. Customer will not use non-standard Claim forms without first consulting with MetLife.
- D. "Reasonable and Customary" Fee Data:** MetLife will maintain and update statistical data needed to administer the Program's reasonable and customary fee basis for Claim payments.
- E. IRS Reports:** MetLife will prepare and file reports and furnish statements relating to Providers, on behalf of the Program, as required by the U.S. Department of the Treasury or the Internal Revenue Service.
- F. Toll Free Phone Line:** MetLife will maintain a toll free phone line to respond to Participants' questions concerning MetLife's Claim Processing Services.
- G. Claim Review Procedure:**
- Customer and MetLife acknowledge that Customer has delegated to MetLife and MetLife has agreed to assume the responsibility and discretionary authority for approving or denying Program Benefits in whole or part and for providing the full and fair review of determinations concerning eligibility for Program Benefits and the interpretation of Program terms in connection with the appeal of Claims denied in whole or in part and, therefore, MetLife is the Named Claims Review Fiduciary. Any determination or interpretation made by MetLife pursuant to this discretionary authority shall be given full force and effect and be binding on the Participant and Customer, unless it is demonstrated that the determination was arbitrary and capricious.
 - Customer will cause notice of the availability of the Claim review procedure to be provided to Participants.
 - Customer will provide MetLife with information and documents within their respective control needed to facilitate the full and fair review of a Claim.

Section 4: REPORT SERVICES

A. Reports Furnished at No Additional Charge:

MetLife will furnish to Customer the following management reports at no additional charge:

<u>Report</u>	<u>Frequency</u>
Premium versus Claims (PVC)	Monthly

B. Reports Furnished at Additional Charge:

At Customer's request, MetLife will furnish to Customer, for additional fees, the following management reports. At Customer's request, MetLife will advise Customer in advance of the charge for each such report, or the rate by which the charge is determined. Such charges will be payable in the manner set forth in **Section 6: Service Fees, Paragraph C.**

<u>Report</u>	<u>Frequency</u>
None	

C. Other Reports:

If Customer requests any additional management reports which MetLife is capable of producing at a cost Customer is willing to pay, MetLife will furnish them to Customer for additional fees, which will be payable in the manner set forth in **Section 6: Service Fees, Paragraph C.**

Section 5: **ADDITIONAL SERVICES**

- A. Regularly Available Additional Services:** The Monthly Service Fee set forth in **Section 6: Service Fees** does not include charges for the following services. If MetLife provides any of these services at the request of Customer, Customer will pay MetLife Additional Service Fees pursuant to **Section 6: Service Fees, Paragraph C**. On request, MetLife will advise Customer of the charge for any of these services or the rate by which the charge is determined.
- 1. Non-Standard Forms:** Printing and supply of non-standard or specially designed Claim forms and/or administrative forms specifically prepared for use in connection with the administration of the Program, including application forms for late enrollment, reinstatement of participation in the Program, or an increase in benefits. Customer understands and agrees that use of non-standard forms may result in increased administrative or Claims costs if they do not present necessary information in a manner consistent with MetLife's Claims or administrative systems, and that Customer will be required to pay such additional costs, if any. Customer will consult with MetLife in advance of ordering or using such non-standard or specially designed forms.
 - 2. Non-Standard Administrative Manuals:** Preparation and maintenance of non-standard administrative manuals to assist the employees of Customer in the administration of the Program.
 - 3. Hypothetical Special Accrual Rates for Budget Purposes:** Calculation of hypothetical special accrual rates for budget purposes.
 - 4. Evaluation of Special Statistical Studies:** Evaluation by MetLife of special statistical studies.
 - 5. Special Telephone Arrangements:** Make any special telephone arrangements not previously described in this Agreement.
 - 6. Claim Consultant Services:** Provide Claim consultant services.
 - 7. Participation in Program Adjustments:** Participation by MetLife representatives as requested by Customer in Program adjustments due to merger, spin-offs, and extensions.
 - 8. Travel Expenses:** Travel expenses incurred by MetLife personnel for travel to and from locations specified by Customer to provide services.
 - 9. Breakdowns on a Unit Basis:** Furnishing breakdowns, calculations, or evaluations on a unit basis, except as provided in **Section 2: Consulting, Actuarial, Technical, and Provider Network Services, Paragraph B**.
- B. Other Additional Services:** MetLife can consult with Customer at their request to determine if any other Additional Services are required. If MetLife is willing and able to perform such services, it will advise Customer of the charge for such services or the rate by which the charge is determined. If MetLife sends Customer written notice of the proposed charge for any Additional Service requested, Customer will be deemed to have accepted the charge quoted by MetLife for the service(s) if it has not objected to the proposed charge or withdrawn the request for such Additional Service(s) within ten (10) business days after receipt of such notice. Customer will pay MetLife Additional Service Fees pursuant to **Section 6: Service Fees, Paragraph C** for any such Additional Service(s).

Section 6: SERVICE FEES

A. Service Fees: The "**Service Fees**" are the amounts payable by Customer to MetLife for the services rendered and supplies provided to Customer by MetLife pursuant to this Agreement. The Service Fees include the Monthly Service Fee, Additional Service Fees, and Service Fee Adjustments.

B. Monthly Service Fee:

1. The "**Monthly Service Fee**" will be determined in the manner set forth in **Appendix A: Monthly Service Fee**.
2. During each Contract Period the Monthly Service Fee may be adjusted, as deemed appropriate by MetLife, each time there is an increase or decrease of Ten Percent (10%) or more in the number of Program Participants.
3. Except as described in the preceding paragraph, for each Contract Period other than the First Contract Period, MetLife reserves the right to establish the applicable rates for the calculation of the Monthly Service Fee for that Subsequent Contract Period.
 - a. If MetLife provides notice to Customer of such applicable rates at least thirty (30) days before the first (1st) day of a Subsequent Contract Period, these rates will be effective as of the first (1st) day of that Contract Period unless MetLife expressly agrees, in writing, to a different effective date.
 - b. If MetLife provides notice to Customer of such applicable rates less than thirty (30) days prior to the first (1st) day of a Subsequent Contract Period, these rates will be effective as of the thirtieth (30th) day following mailing by MetLife of notice of such rates to Customer unless MetLife expressly agrees, in writing, to a different effective date.
4. Payments of the Monthly Service Fee are due to MetLife on the first (1st) day of each calendar month.

C. Additional Service Fees: Customer will pay to MetLife the fees for any services actually provided which are described in **Section 4: Report Services** and **Section 5: Additional Services**, which are in addition to and not included in the Monthly Service Fee. The fees for such Additional Services will be MetLife's then current standard charge for such services at the time the services are rendered. Payment of Additional Service Fees is due within thirty (30) days after Customer receives written notice of the amount of such fees for such Additional Services which have been provided, unless the Parties agree to include those Additional Service Fees in the Service Fee Adjustments.

D. Service Fee Adjustments:

1. At the conclusion of each Contract Period (or at the conclusion of each year if any Contract Period is more than one (1) year), the Monthly Service Fee may be adjusted to take into account any variations between the factors used to determine the Monthly Service Fee at the time it was due and payable and actual experience determined by the books and records of Customer.
2. If it is determined that Customer is entitled to a refund of the amounts paid during the prior year, the amount due Customer shall be credited to the subsequent Monthly Service Fees due. However, if this Agreement has been terminated, the amount due Customer shall be applied to any amounts due and payable to MetLife, and any excess shall be returned to Customer within thirty (30) days after the amount has been determined.
3. If it is determined that MetLife is entitled to an additional payment, Customer shall pay such amount within thirty (30) days after Customer receives written notice of the amount due on account of such adjustment.

E. Late Payment Charge:

- 1. Assessment of Late Payment Charge:** If MetLife does not receive a payment on or before its due date, the unpaid amount is subject to a "**Late Payment Charge**". The Late Payment Charge will be assessed on a per diem basis each day beginning on the day after the payment due date and ending the day MetLife receives payment. The Late Payment Charge will be calculated based on an annual percentage rate determined by adding seven (7) percentage points to the average of the rates fixed at the first weekly auction of six (6) month United States Treasury bills in each of the twelve (12) prior months. Late Payment Charges are due and payable within thirty (30) days following receipt of written notice by Customer from MetLife of the amount due.
- 2. Change of Late Payment Charge Formula:** MetLife reserves the right to change the formula for calculating the Late Payment Charge. The new Late Payment Charge formula will be effective as of the thirtieth (30th) day following mailing of written notice by MetLife to Customer.
- 3. Waiver of Late Payment Charge:** The Late Payment Charge will be waived with respect to the Monthly Service Fee if payment of it is received by MetLife by the fifteenth (15th) day following its due date. MetLife may, in its sole discretion, waive any other Late Payment Charge but any such waiver by MetLife will not prejudice MetLife's right to receive a Late Payment Charge on any other (previous or subsequent) payment due under this Agreement.

- F. Suspension of Services:** In the event any payment is not received within thirty (30) days of its due date, MetLife may, in its sole discretion, suspend any further services under this Agreement including Claim Processing Services. Such suspension of service(s) shall become effective five (5) business days after Customer has received written notice of MetLife's intention to suspend services, unless Customer has remitted all outstanding unpaid amounts before that date.

Section 7: SPECIAL BANKING ARRANGEMENTS

- A. Establishing an Account or Accounts:** To implement this Agreement, Customer must establish a special bank account, or accounts if required, with JPMorgan Chase Bank, New York, New York ("**JP Morgan Chase**") into which Customer will ensure that funds are deposited and from which individuals authorized by MetLife will be authorized to draw drafts, checks, or electronic fund transfers (EFTs) to pay Program Benefits (each of which is referred to as "**Account**").
- B. Bank Deposits:** Customer will ensure that deposits are made into the Account in such amounts and at such intervals as are required to discharge Customer liabilities for Program Benefits. The amounts and frequency of such deposits will be determined by Customer based on information provided by JP Morgan Chase to Customer and be made by transfer from Customer's corporate account.
- C. Account Activity Reports:**
- Customer will obtain from JPMorgan Chase:
 - Daily automated faxes ("**ChaseFax**") showing activity information of the Account and are to be delivered directly to party designated by Customer. Such activity information shall include: (a) available balance; (b) closing balance; (c) availability of deposited funds; (d) a description of transactions with respect to the Account; and (e) totals for drafts/EFTs cleared.
 - A "**Monthly Bank Statement**" showing the daily transactions for the Account for the previous month.
 - MetLife shall provide Customer or Customer's designee with a "**Monthly Letter**" showing the daily activity for the Program's financial experience for the previous month, including drafts drawn, outstanding drafts, voided drafts, personal refunds, funding adjustments, and drafts (bank) paid.
- D. Insufficient Bank Balances:**
- If the Account's deposit balance is insufficient to cover drafts, checks, or EFTs presented to pay Program Benefits, the Account will be deemed to be in "**Overdraft**" status. In the event of an Overdraft, MetLife has the right to suspend the performance of its services under this Agreement including Claim Processing Services. Such suspension of service(s) shall become effective five (5) business days after Customer has received written notice of MetLife's intention to suspend services, unless Customer has remitted all outstanding unpaid amounts before that date.
 - Under no circumstances is MetLife required to advance funds to cover an Overdraft. However, MetLife may, in its sole discretion, elect to advance its own funds to cover an Overdraft.
 - If, in its sole discretion, MetLife has advanced its own funds to cover an Overdraft, Customer agrees to repay MetLife the full amount advanced by MetLife plus "**Overdraft Charges**" calculated based on an annual percentage rate determined by adding seven (7) percentage points to the average of the rates fixed at the first weekly auction of six (6) month United States Treasury bills in each of the twelve (12) prior months. Customer agrees that the Overdraft Charges will be applied to the outstanding Overdraft balance (for which MetLife has advanced its own funds) on a per diem basis for each day the Account was in an Overdraft status. Customer acknowledges that MetLife reserves the right to change the formula for calculating the Overdraft Charges. Any such new formula for Overdraft Charges will be effective as of the thirtieth (30th) day following mailing of written notice by MetLife to Customer.
 - The Overdraft Charges will not be imposed by MetLife unless all three (3) of the following conditions are met:

- a. The total amount overdrawn exceeds three (3) days average drafts paid per month; and
 - b. The Account is overdrawn on more than three (3) days during a month; and
 - c. The sum of positive balances for the month is less than three (3) times the value of the overdrafts for that month.
- 5. Customer acknowledges that MetLife reserves the right to change the conditions under which the Overdraft Charges will not be imposed. The new conditions will be effective as of the thirtieth (30th) day following mailing of written notice by MetLife to Customer.
- 6. Customer agrees to pay MetLife the full amount of any amount advanced by MetLife to cover Overdrafts as well as the Overdraft Charges within thirty (30) days following Customer's receipt of notice from MetLife of the amount of payment due.
- E. **Bank Charges:** All bank charges imposed by JPMorgan Chase for customary banking services, including the maintenance of the Account, processing of deposits, processing of drafts, checks, or EFTs, and Account Activity Reports will be paid by MetLife and are included in the Monthly Service Fee. Except as provided in **Paragraph D of this Section**, MetLife will not impose any other charge with respect to the Account. If Customer requests any additional services from JPMorgan Chase with respect to the Account, it will pay JPMorgan Chase for any charges incurred for those services.
- F. **Bank Agreements:** The identification of the Account, nature and frequency of Bank reports on Account activity, mechanics of processing individual drafts, checks, or EFTs, information appearing on drafts, checks, or EFTs, and retention of accepted drafts, checks, or EFTs must be agreed to by Customer, MetLife, and JPMorgan Chase.

Section 8: PROGRAM DESCRIPTION

- A. Customer to Furnish Copy to MetLife:** Customer will cause to be furnished to MetLife a copy of the Program documents, each applicable PD, and any future modifications to any applicable PD. A copy of each applicable PD in effect as of the effective date of this Agreement will be deemed to be annexed as **Appendix B: Program Description**. Customer Covenants that it will make a copy of each applicable PD available to MetLife within thirty (30) days after it becomes available and, upon receipt of such copy by MetLife, each such copy will be deemed to be annexed as **Appendix B: Program Description**. In addition, notwithstanding the requirements of **Section 19: General Provisions** of this Agreement with respect to Modification of Agreement, each time an PD is itself modified, the **Appendix B: Program Description** will be deemed to have been amended to incorporate such modified PD as of the time MetLife has been given notice of the changes reflected in such modified PD.
- B. Customer to Furnish Advance Notice of Program Changes:** Customer agrees that MetLife should be provided reasonable advance notice of Program Benefit or other Program changes, but in no event less than ninety (90) days with respect to changes in Network Services or sixty (60) days with respect to other Program Benefit or other Program changes, since such advance notice is necessary to provide MetLife with an adequate period of time in which to make necessary adjustments to administer a change as of its effective date. Therefore, Customer Covenants that it will cause MetLife to be furnished with such advance notification of any change in the Program which may affect the payment of Program Benefits or other services provided by MetLife under this Agreement.
- C. Customer Liability for Program Benefits:** Liability for Program Benefits is always the obligation of the Customer. MetLife does not insure and is not liable for Program Benefits. Customer Covenants that they will cause written notice to be provided to Participants disclosing Customer's liability for Program Benefits.

Section 9: CONFIDENTIAL BUSINESS INFORMATION AND USE OF NAMES, SERVICE MARKS, AND TRADEMARKS

- A. Confidential Business Information:** Customer and MetLife acknowledge that in discharging their obligations under this Agreement they may disclose or make available to each other Confidential Business Information.
- B. Identification of Confidential Business Information:** Customer and MetLife each agree to make every reasonable effort under the circumstances to identify to each other Confidential Business Information at the time of its disclosure and to fully protect and preserve the confidential, proprietary, and trade secret nature of each other's Confidential Business Information.
- C. Non-Disclosure of Confidential Business Information:** Customer and MetLife each agree not to disclose the other's Confidential Business Information to any other person, firm, or entity without obtaining the other's prior written consent.
- D. Examiners and Confidential Business Information:** Customer understands and agrees that if Customer retains the services of a third party ("**Examiner**") to perform an Examination, review, or audit in which Confidential Business Information is revealed, MetLife will require the Examiner to execute a Confidentiality Agreement substantially in the form set forth in **Appendix C: Examiner's Confidentiality Agreement** before the Examination begins.
- E. Limitation on Non-Disclosure Obligation:** Customer and MetLife each agree that the obligations regarding Confidential Business Information shall not apply to any information which was previously disclosed by the other without restriction or which has become generally available to the public through authorized disclosure.
- F. Unauthorized Disclosure of Confidential Business Information:** The Parties agree that unauthorized disclosure of Confidential Business Information is a material breach of the Agreement resulting in irreparable harm to the Party whose Confidential Business Information has been improperly disclosed for which the payment of money damages is inadequate, such damages being difficult to ascertain in any event. The Parties agree, therefore, that the injured Party may, at its sole option:
 - 1. Obtain immediate injunctive relief in any court of competent jurisdiction enjoining any further such breach(es) and the Parties consent to the entry of judgment for injunctive relief; and/or
 - 2. Immediately terminate this Agreement by giving the other Party written notice.
- G. No Use of Other Party's Name, Service Marks, or Trademarks:** Each Party agrees that, without the other Party's written consent signed by an officer of the Party, it will not use that other Party's company name, service marks, trademarks, or other legally protected property rights.
- H. Name of Program:** The name of the Program shall be used in any customized Participant communication materials. Unless otherwise agreed, generic literature will also be used in communicating the terms and conditions of the Program.
- I. Customer's Approval of Material Used by MetLife:** All communications developed by MetLife specifically for Customer and any formal advertising or promotional pieces which specifically refer to the Program must receive Customer's approval prior to release, which approval will not be withheld unreasonably.
- J. MetLife's Approval of Material Used by Customer:** All communications developed by Customer which refer to MetLife, Participating Providers, or Provider Networks must receive MetLife's approval prior to release, which approval will not be withheld unreasonably.

Section 10: PERSONAL HEALTH INFORMATION

- A. Definition of PHI:** Personal Health Information or "PHI" means individually identifiable information that is transmitted or maintained in any medium and relates to, the past, present or future physical or mental health or condition of a Participant; the provision of health care to a Participant; or future payment for the provision of health care to a Participant.
1. To the extent that it is individually identifiable and related to the past, present or future physical or mental health or condition of a Participant; the provision of health care to a Participant; or future payment for the provision of health care to a Participant, PHI includes: demographic information about the Participants, such as names; geographic subdivisions smaller than a state (including but not limited to street addresses and ZIP codes); all elements of dates (except year) for dates directly related to an individual, including but not limited to birth date; telephone numbers; fax numbers; electronic mail (E-mail) addresses; Social Security numbers; Medical record numbers; health plan beneficiary numbers; account numbers; certificate/license numbers; vehicle identifiers and serial numbers, including license plate numbers; device identifiers and serial numbers; web Universal Resource Locators (URLs); Internet Protocol (IP) address numbers; biometric identifiers, including finger and voice prints; full face photographic images and any comparable images; and any other unique identifying number, characteristic, or code.
 2. "The Customer's PHI" means any PHI received or created by MetLife in providing services pursuant to the Agreement.
- B. Disclosures in Program Documents:** Customer Represents and warrants that it has amended its Program documents and signed a certification for the Program in accordance with HIPAA, including its requirements at 45 CFR 164.504(f) and as necessary to provide for disclosure of PHI to the program sponsor for certain Program administration functions and that Customer will only use and disclose PHI in accordance with such Program document provisions. Customer agrees to indemnify MetLife against Damages incurred by MetLife that arise from Customer's breach of said representation and warranty.
- C. Disclosure of PHI by MetLife:**
1. MetLife agrees not to use or disclose the Customer's PHI except:
 - a. To perform functions, activities, or services for, or on behalf of, the Customer and the Program, relating to the Agreement and consistent with applicable law, or
 - b. To the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law, and only to the extent that such use or disclosure complies with any applicable HIPAA requirements relating to uses and disclosures required by law, (including those found at 45 CFR 164.512 (a), (c), (e), and (f)).
 2. MetLife agrees to use appropriate safeguards to prevent use or disclosure of the Customer's PHI other than as provided for by this Agreement.
 3. MetLife agrees to promptly report to Program Administrator any use or disclosure of the Customer's PHI not permitted by this Agreement of which it becomes aware and further agrees to mitigate any harmful effect of a use or disclosure that is made by MetLife in violation of the requirements of this Agreement.
 4. MetLife shall ensure that any agents, including any subcontractor, that MetLife may use in accordance with this Agreement and to whom MetLife provides the Customer's PHI agrees to the same restrictions and conditions that apply to MetLife with respect to the Customer's PHI pursuant to this Section.

5. Within 30 days of a request to MetLife by Program Administrator or a Participant, MetLife shall provide to the Program Administrator or to a Participant on behalf of the Program, any Customer PHI or information relating to the Customer's PHI necessary for the Program to comply with its obligations under HIPAA (including 45 CFR 164.524 through 164.528) to provide Participants with access to, amendment of, and an accounting of disclosures of the Customer's PHI. MetLife agrees to incorporate any amendments of the Customer's PHI as requested by Program Administrator or a Participant, subject to applicable law.
 6. MetLife agrees to make its internal practices, books, and records relating to its use or disclosure of the Customer's PHI available to the Secretary of the United States Department of Health and Human Services (the "**Secretary**") at his/her request to determine the Program's compliance with 45 CFR Part 164, Subpart E of HIPAA.
- D. Electronic PHI:** In order to comply with the security regulations of HIPAA, including 45 CFR 164.308, MetLife agrees to:
1. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Customer's electronic PHI that MetLife creates, receives, maintains, or transmits on behalf of Customer;
 2. ensure that any agent, including a subcontractor, to whom MetLife provides such Customer's electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
 3. report to Customer any security incident , as such term is defined in 45 CFR 164.304, of which MetLife becomes aware.
- E. HITECH Act:** In order to comply with HIPAA as amended by the Health Information Technology for Economic and Clinical Health Act ("**HITECH Act**"):
1. MetLife agrees and acknowledges that it is directly subject to HIPAA as amended by the HITECH Act, including its provisions relating to security and privacy of PHI as well as its enforcement and penalty provisions.
 2. MetLife agrees that it will: (a) comply with all applicable security and privacy provisions of HIPAA as amended by the HITECH Act and as it may be amended from time to time; (b) not act in any way to interfere with or hinder Customer's ability to comply with HIPAA as amended by the HITECH Act and as it may be amended from time to time; and (c) use its best efforts to notify Customer within five (5) business days of discovering a "breach" as that term is defined in 45 CFR 164.402.
- F. Termination or Breach:** MetLife agrees that upon termination of the Agreement it will either return or destroy all the Customer's PHI it maintains. If it is determined that such return or destruction is not feasible, MetLife agrees to extend the protection of PHI set forth in this Section to the Customer's PHI beyond the termination of this Agreement and further agrees that any further use or disclosure of the MetLife PHI will be solely for the purposes that make return or destruction infeasible. MetLife and the Customer agree that destruction without retention of copies is deemed "infeasible" if prohibited by the terms of this Agreement or by applicable law.

In the event either Party ("**Non-Breaching Party**") learns of a pattern of activity or practice of other Party that constitutes a material breach or violation of its obligations relating to PHI under the Agreement, Non-Breaching Party will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful, Non-Breaching Party will terminate the Agreement, if feasible, or, if termination is not feasible, report the problem to the Secretary.

1. MetLife agrees that its breach of any provision of this Section shall constitute a material breach of this Agreement and provide grounds for termination of this Agreement by the Customer.
2. MetLife and the Customer agree that this Section and its provisions, whether separately or in any

combination, do not, and are not intended to, confer any rights or remedies upon any third party.

G. Non-Individually Identifiable Participant Information:

MetLife may use non-individually identifiable information obtained from Customer's PHI, which is de-identified pursuant to 45 C.F.R. 164.514, for the purpose of data compilation, statistical analyses, and other studies. Customer recognizes that such compilations, analyses, and studies are the exclusive property of MetLife and may be used in any way by MetLife.

Section 11: EXAMINATIONS

- A. Examination of MetLife:** Subject to the provisions of this Agreement regarding Confidential Information, one (1) time during each Contract Period, upon Customer's reasonable request, which shall be provided no less than 30 business days prior to the proposed examination date, MetLife will make available for examination (which is deemed to include examination, review, and/or audit) during MetLife's normal business hours, its files, books, and records pertaining to the Program.
- B. Charges for Examination of MetLife:** If more than one (1) examination during any Contract Period is requested, Customer agrees that it will be obligated to pay an additional charge to MetLife for each examination which will be calculated by MetLife based upon its then current standard charges.
- C. Confidentiality Agreement:** No person or entity may conduct an examination pursuant to this **Section** without first executing an Examiner's Confidentiality Agreement substantially in the form set forth in **Appendix C: Examiner's Confidentiality Agreement**.

Section 12: TAXES

A. Customer Obligation to Pay Taxes: If at any time on or after the effective date of this Agreement, MetLife is required to pay any federal, state, or local taxes directly attributable to:

1. Program Benefits paid pursuant to this Agreement, or
2. Fees paid or payable to MetLife for services provided under this Agreement, or
3. Any other measurement related to the size or scope of the Program (such as the number of employees or individuals covered by the Program, etc.),

(collectively "**Taxes**"), Customer will pay MetLife an amount equal to such Taxes plus an amount equal to any additional taxes, interest, and/or penalties directly attributable to such Taxes, unless those additional taxes, interest, and/or penalties were incurred solely because of the negligence of MetLife. The federal, state, and local Taxes described in the preceding sentence shall not include any income or similar tax imposed on MetLife that are attributable to the Agreement.

B. Payment Due Date: Customer will pay these additional amounts to MetLife within thirty (30) days following Customer's receipt of written notice from MetLife of the additional amounts due. Payments not received by the thirtieth (30th) day are subject to the Late Payment Charge provisions set forth in **Section 6: Service Fees, Paragraph E**.

C. Determination That Taxes Were Not Valid: Customer will pay these additional amounts even if the validity of the Taxes has not been finally determined. If it is finally determined that such Taxes were not valid, MetLife will refund to Customer an amount equal to those additional amounts previously paid by Customer plus interest determined in accordance with MetLife's regular procedures then in effect, less Customer's pro rata share of any expenses incurred by MetLife, as determined by MetLife, in contesting the validity of such Taxes.

D. Penalties: If Customer has paid MetLife the amounts described in **Paragraph A of this Section**, but as of the time of such payment, interest, and/or penalties had not yet accrued or been assessed, Customer will not be required to pay any additional amount to MetLife based upon or measured by subsequently accrued or assessed interest and/or penalties.

Section 13: PROGRAM BENEFITS OVERPAYMENTS

- A. Definition of Overpayment:** For the purposes of this Agreement, an "**Overpayment**" means a payment made to a Participant or a Participating or Non-Participating Provider which is in excess of the amount which the person was entitled to receive under the Program.
- B. Cooperation to Recover Overpayments:** The Parties will cooperate fully to make every reasonable effort under the circumstances, considering the chances of successful recovery and the costs thereof, to recover Overpayments.
- C. Assignment of Authority to Recover Overpayments:** Customer assigns to MetLife the authority to pursue recovery of Overpayments, including commencing litigation, and MetLife will pursue all reasonable means of recovery of Overpayments under the circumstances, but MetLife shall obtain Customer's consent prior to commencing litigation.
- D. Recovery of Overpayments:** Overpayments will be considered fully or partially (as the case may be) recovered as of the day the funds are actually received. Partial recoveries of Overpayments will include receipt of a partial payment pursuant to (1) an amortization schedule; (2) offsets made against future Claims; and (3) amounts offset by Customer against wages, salary, or other benefits.
- E. Reports of Recovery of Overpayments:** Partial or full recoveries of Overpayments made through the efforts of Customer will be reported to MetLife by Customer in a manner agreed to by MetLife and Customer.
- F. Reimbursement of Recovered Overpayments:** If MetLife or the Customer recovers an Overpayment, the recovering Party will reimburse the Program for One Hundred Percent (100%) of the recovered Overpayment.
- G. MetLife Reimbursement of Certain Unrecovered Overpayments:** MetLife will reimburse the Program for One Hundred Percent (100%) of an unrecovered Overpayment if and at such time as it is determined that:
 - 1. The Overpayment was caused by a MetLife act or omission that was Grossly Negligent, fraudulent, or criminal;
 - 2. All reasonable means of recovery under the circumstances have been exhausted; and
 - 3. MetLife's acts or omissions were not undertaken at the express direction of Customer.

"Grossly Negligent" means a deliberate, voluntary act or omission, within the scope of the individual's employment, which a reasonable person acting in a similar capacity and familiar with such matters would have known would probably result in harm to another. Notwithstanding any other provision of this paragraph, MetLife will assume no liability for any unrecovered Overpayment if Customer does not give its consent to MetLife to commence litigation to recover any such unrecovered Overpayment.

Section 14: PROGRAM BENEFITS LITIGATION

- A. Definition of Program Benefits Litigation:** For the purposes of this **Section, "Program Benefits Litigation"** means a demand asserted or litigation, proceedings, or arbitration commenced by a Participant, Program beneficiary or dental care provider to recover Program Benefits and, if applicable, attorney fees, court costs, and expenses incurred in connection with such demand, litigation, proceedings, or arbitration.
- B. Role of Named Claims Review Fiduciary:** The Parties understand and agree that the Named Claims Review Fiduciary is a proper party defendant in Program Benefits Litigation.
- C. Customer Liability for Program Benefits:** The Parties understand and agree that Customer is always liable for the full amount of any Program Benefits paid as a result of Program Benefits Litigation and for any legal fees and court costs awarded to the Participant or Participating or Non-Participating Provider in connection therewith. In no event will MetLife be liable for any amount of Program Benefits or for any legal fees or costs awarded to the Participant or Participating or Non-Participating Provider in connection with Program Benefits Litigation and if MetLife advances payment for same, Customer will promptly reimburse MetLife for the full amount advanced.
- D. If Program Benefits Litigation Is Brought Against MetLife**
1. MetLife will provide written notice to Customer, as soon as practicable, but in no event more than thirty (30) days, after MetLife receives notice of Program Benefits Litigation, and will, at reasonable intervals, provide them with information with respect to the status of the Program Benefits Litigation. MetLife will make every reasonable effort to obtain Customer's prior agreement in advance of settling Program Benefits Litigation, which agreement will not be withheld unreasonably.
 2. MetLife will select and retain counsel to represent MetLife and be liable for the payment of MetLife's own legal fees, court costs, and disbursements.
 3. Customer will provide MetLife with such cooperation as is reasonable under the circumstances to assist MetLife in its defense of Program Benefits Litigation.
 4. MetLife will provide Customer with such cooperation as is reasonable under the circumstances in the event either or both elect to intervene as parties in Program Benefits Litigation.
- E. If Program Benefits Litigation Is Brought Against Parties Other Than MetLife:** If Program Benefits Litigation is brought against Customer:
1. In order that MetLife may remain fully informed for the purposes of providing services under this Agreement, Customer will provide written notice to MetLife as soon as practicable, but in no event more than thirty (30) days, after they receive notice of Program Benefits Litigation, and they will, at reasonable intervals, cause MetLife to be provided with information with respect to the status of the Program Benefits Litigation as reasonably requested by MetLife.
 2. Customer will select and retain counsel to represent their respective interests and will assume liability for the payment of their own legal fees, costs, and disbursements.
 3. MetLife will provide Customer with such cooperation as is reasonable under the circumstances to assist in their defense of Program Benefits Litigation.
 4. Customer will provide MetLife with such cooperation as is reasonable under the circumstances in the event MetLife elects to intervene as a party in such Program Benefits Litigation.
- F. Shared Counsel:** If Program Benefits Litigation is brought jointly against MetLife and Customer, or if Program Benefits Litigation is brought against one or more of them and one or more of the others are subsequently joined as a party or parties to such Program Benefits Litigation, in addition to the

responsibilities and obligations previously described in this **Section**, to the extent it is reasonable under the circumstances in order to control legal expenses, those parties to the Program Benefits Litigation may agree to share counsel or direct one party's counsel to assume the role of lead counsel. In this event, those parties will share equitably in the aggregate total cost of legal fees, costs, and disbursements in connection with Program Benefits Litigation.

Section 15: INDEMNIFICATION OF CUSTOMER

A. **Definitions:** For the purposes of this **Section**:

1. **"Damages"** means settlements, awards, and judgments (not including punitive damages, Program Benefits, or those attorney fees, court costs, and expenses described in **Section 14: Program Benefits Litigation**) and reasonable legal fees, court costs, and expenses incurred by Customer to resolve a Non-Party Claim.
2. **"Non-Party Claim"** means a demand asserted or litigation, proceedings, or arbitration commenced by a person or entity other than Customer or MetLife to obtain a settlement, award, or judgment against Customer arising from an act or omission by MetLife in connection with this Agreement or the Program. However, a Non-Party Claim does not include any portion of a demand asserted or litigation, proceeding, or arbitration commenced which has been defined under this Agreement as Program Benefits Litigation. The rights and obligations of the Parties with respect to Program Benefits Litigation are fully described in **Section 14: Program Benefits Litigation**.

B. **Indemnification by MetLife:** MetLife will indemnify Customer against Damages if and at such time as it has been determined that:

1. Customer incurred Damages arising from MetLife's breach of this Agreement, breach of fiduciary duty, or negligent, intentionally tortious, fraudulent, or criminal act or omission by MetLife in connection with this Agreement or the Program; and
2. Customer first received notice (oral or written) of the Non-Party Claim no later than one (1) year after this Agreement terminated; and
3. Customer provided written notice to MetLife of the Non-Party Claim as soon as practicable, but in no event more than one hundred and twenty (120) days, after Customer first received notice of the Non-Party Claim; and
4. The Damages did not arise from a MetLife act or omission undertaken at the express direction of Customer.

Notwithstanding the foregoing, if the Damages arose from the acts or omissions of Customer in connection with this Agreement or the Program, the obligation of MetLife to indemnify Customer shall be reduced to the proportionate share of the Damages which is attributable to MetLife's acts or omissions.

C. **Discretion to Resolve Non-Party Claim:** Customer will have discretion to resolve a Non-Party Claim in a reasonable manner and amount under the circumstances. However, failure to act reasonably in resolving a Non-Party Claim will relieve MetLife of its obligations to indemnify only if and to the extent it has been prejudiced by this failure.

D. **No Rights Afforded to Third Parties:** Nothing in this **Section** is intended, nor shall it be interpreted, to give any third party, including but not limited to Participants or Participating or Non-Participating Providers, any right, claim, or cause of action against Customer or MetLife.

Section 16: INDEMNIFICATION OF METLIFE

A. **Definitions:** For the purposes of this **Section**:

1. **"Damages"** means settlements, awards, and judgments (not including punitive damages, Program Benefits, or those attorney fees, court costs, and expenses described in **Section 14: Program Benefits Litigation**) and reasonable legal fees, court costs, and expenses incurred by MetLife to resolve a Non-Party Claim.
2. **"Non-Party Claim"** means a demand asserted or litigation, proceedings, or arbitration commenced by a person or entity other than Customer or MetLife to obtain a settlement, award, or judgment against MetLife arising from an act or omission by Customer in connection with this Agreement or the Program. However, a Non-Party Claim does not include any portion of a demand asserted or litigation, proceeding, or arbitration commenced which has been defined under this Agreement as Program Benefits Litigation. The rights and obligations of the Parties with respect to Program Benefits Litigation are fully described in the **Section 14: Program Benefits Litigation**.

B. **Indemnification by Customer:** Customer will indemnify MetLife against Damages if and at such time as it has been determined that:

1. MetLife has incurred Damages arising from Customer's breach of this Agreement, breach of fiduciary duty, or negligent, intentionally tortious, fraudulent, or criminal act or omission by Customer in connection with this Agreement or the Program or Damages arising from disclosure, re-disclosure or use of the information related to Claims (the "Claims Information") when MetLife releases such Claims Information to a third party pursuant to Customer's or Program Administrator's request; and
2. MetLife first received notice (oral or written) of the Non-Party Claim no later than one (1) year after this Agreement is terminated; and
3. MetLife provided written notice to Customer of the Non-Party Claim as soon as practicable, but in no event more than one hundred and twenty (120) days, after MetLife first (1st) received notice of the Non-Party Claim; and
4. The Damages did not arise from a Customer act or omission undertaken at MetLife's express direction.

Notwithstanding the foregoing, if the Damages arose from the acts or omissions of MetLife in connection with this Agreement or the Program, the obligation of Customer to indemnify MetLife shall be reduced to the proportionate share of the Damages which is attributable to Customer's or Program Administrator's acts or omissions.

C. **Discretion to Resolve Non-Party Claim:** MetLife will have discretion to resolve a Non-Party Claim in a reasonable manner and amount under the circumstances. However, failure to act reasonably in resolving a Non-Party Claim will relieve Customer of its obligations to indemnify only if and to the extent it has been prejudiced by this failure.

D. **No Rights Afforded to Third Parties:** Nothing in this **Section** is intended, nor shall it be interpreted, to give any third party, including but not limited to Participants or Participating or Non-Participating Providers, any right, claim, or cause of action against Customer or MetLife.

Section 17: TERM AND TERMINATION OF THIS AGREEMENT

A. Continuity of Agreement: This Agreement shall continue in effect during the First and each Subsequent Contract Period unless terminated in accordance with this **Section**.

B. Termination of this Agreement:

1. Date of Termination: Notwithstanding any other term or condition of this Agreement, this Agreement will terminate on the earliest of:

- a. The thirtieth (30th) day following receipt of written notice by Customer or MetLife from the other of the other's intention to terminate the Agreement; or
- b. Five (5) business days after Customer has received written notice of MetLife's intention to terminate this Agreement because the Account is not sufficiently funded pursuant to **Section 7: Special Banking Arrangements** or the Monthly Service Fee or other service fee or charge due by Customer to MetLife under this Agreement has not been paid when due, unless Customer has remitted all outstanding unpaid amounts before that date. MetLife's failure to treat this Agreement as terminated in accordance with this Paragraph shall not be deemed to be a waiver of MetLife's right to terminate this Agreement in accordance with this Paragraph at a subsequent time; or
- c. Immediately, as provided for in **Section 9: Confidential Business Information and Use of Names, Service Marks, and Trademarks, paragraph G (2)**, or
- d. Any other date determined by written agreement among the Parties.

2. Processing of Run-Out Claims: Upon termination of this Agreement in its entirety for any reason other than Customer's failure to pay any fee or charge due to MetLife under this Agreement, MetLife will, unless otherwise agreed by and among the Parties:

- a. Provide Claim Processing Services with respect to Claims incurred prior to the effective date of termination if Customer continues to ensure that deposits are made to the Account subject to the same conditions as if this Agreement had not terminated, so that MetLife may make the payments described in this Section; and
- b. Consider benefit payments under the terms of the Program for complete Provider Network Services that commenced prior to the effective date of termination.

3. Processing of Run-Out Claims if Customer Fails to Pay Fees: Upon termination of this Agreement by MetLife because of Customer's failure to pay any fee or charge due to MetLife under this Agreement, only if and under those conditions agreed to in writing by and among the Parties, MetLife will:

- a. Provide Claim Processing Services with respect to Claims incurred prior to the effective date of termination if Customer continues to ensure that deposits are made to the Account subject to the same conditions as if this Agreement had not terminated, so that MetLife may make the payments described in this Section; and/or
- b. Consider benefit payments under the terms of the Program for complete Provider Network Services that commenced prior to the effective date of termination.

4. **Fees for Processing Run-Out Claims:** The fees for processing run-out Claims will be based on rates used to determine the Monthly Service Fee in the final Contract Period or on factors used by MetLife to determine appropriate fees for similar service during the final Contract Period. Any such fee will be payable thirty (30) days after Customer receives written notice of the amount of such fees. Any late payment shall be subject to the Late Payment Charge provisions set forth in **Section 6: Service Fees, Paragraph E.**
 5. **Closing Account:** When all Program Benefit payments have been made as described in **Paragraphs B.2 or B.3 of this Section**, MetLife will notify Customer so that the Account may be closed; and within a reasonable period of time following termination of this Agreement, MetLife will release to Customer, in MetLife's then standard format, all records and files relating to Program Benefits paid.
- C. Termination of MetLife's Network Service Area:** MetLife reserves the right to discontinue a Participating Provider Network in any Network Service Area if:
1. MetLife has a reasonable and prudent reason for such termination; and
 2. MetLife gives Customer at least sixty (60) days advance written notice of the effective date of such termination; and
 3. MetLife provides Customer with reasonable cooperation, under the circumstances, to minimize disruption to the Program and Program Participants. In the event of such termination, applicable payments due by Customer to MetLife will be adjusted accordingly.

Section 18: RESPONSIBILITIES

The parties acknowledge that in fulfilling its obligations under this program MetLife is not exercising discretion with respect to an ERISA plan.

Section 19: GENERAL PROVISIONS

- A. Agreement Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and these counterparts will constitute but one and the same instrument.
- B. Certification and Licensing:** MetLife Represents that it has obtained all licensing and certifications presently required by local, state, or federal law; Covenants that it will continue to obtain and maintain all such necessary licensing and certifications; and that in performing services under this Agreement, MetLife will act within the scope of such licenses and certifications.
- C. Choice of Law:** This Agreement and the obligations of the Parties shall be governed by and construed in accordance with the law of the State of New York.
- D. Compliance:** MetLife and Customer Covenant that they will each remain in full compliance with all applicable laws and regulations.
- E. Cooperation:** The Parties will provide each other with statistical and other information, in such forms and at such intervals as are mutually acceptable, which may reasonably be needed by a Party to perform services in connection with this Agreement or the Program.
- F. Entire Contract:** This Agreement and its Appendices constitutes the entire contract between the Parties and is intended to supersede any and all prior written or verbal agreements, proposals, or representations by and among the Parties.
- G. Fiduciary Responsibilities:** To the extent that MetLife and Customer have undertaken the discretionary responsibility of a 'fiduciary', each will fulfill its fiduciary duties solely in the interest of the Participants for the exclusive purpose of facilitating the provision of Program Benefits to Participants and defraying its reasonable expenses of administering the Program. Each will exercise its fiduciary duties with the care, skill, prudence, and diligence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like Claims in accordance with the terms and conditions of the Program.
- H. Independent Contractor Status:** In fulfilling its obligations in connection with this Agreement and the Program, MetLife acts in the capacity of independent contractor as to Customer.
- I. Liability Coverage:** Each Party Covenants, respectively, that during the term of this Agreement and for a reasonable period of time following termination of this Agreement, it will maintain prudent levels of liability protection either through third party liability coverage or self-insurance or a combination thereof with respect to its performance of services in connection with this Agreement and the Program; and each will provide the other, upon reasonable request, with evidence of such coverage and will provide reasonable advance notice to the other of any material change in the liability protection.
- J. Limitation on Liability / Limitation on Actions:** Any suit between or among MetLife and any other Party, arising from the obligations of any Party in connection with this Agreement or the Program, must be instituted within the earlier of two (2) years from the date that the alleged wrongful act or omission occurred or two (2) years from the date this Agreement terminates. MetLife's Liability to Customer and Program Administrator under **Sections 13, 14, 15, and 16** of this Agreement for each Contract Period shall not, in any event, exceed the Service Fees paid to MetLife during such Contract Period. Customer and Program Administrator's liability to MetLife under **Sections 13, 14, 15, and 16** of this Agreement for each Contract Period shall not in any event exceed the Service Fees paid to MetLife during such Contract Period.

- K. Release of Claims Information:** Customer and Program Administrator understand(s) and agree(s) that if Customer or Program Administrator request(s) MetLife to release to a third party ("**Vendor**") certain information related to the Claims received by MetLife in providing the services under this Agreement (the "**Claims Information**"), MetLife will require Customer and Vendor to execute a letter agreement substantially in the form set forth in **Appendix D: Letter Agreement Regarding Release of Claims Information** before MetLife releases such Claims Information to Vendor.
- L. Modification of Agreement:** Unless otherwise expressly provided in this Agreement, changes to this Agreement may be made only with agreement of all Parties evidenced in writing signed by authorized officers representing each Party.
- M. Notices:** Unless and until the Parties give written notice otherwise, all notices required under this Agreement shall be in writing and shall be addressed as follows:

Metropolitan Life Insurance Company

Address

City State Zip

Attention:

MetLife Officer Name, Title

Sample Customer, as Program Sponsor

Address

City State Zip

Attention:

Title and Contact Name

- N. Survival:** Unless otherwise specifically provided in this Agreement, the obligations of the Parties shall survive termination of this Agreement when necessary to effect the intent of the Parties as herein expressed.
- O. Waivers:** The waiver by any Party of any breach of any provision of this Agreement by another Party, shall not be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement. The failure to exercise any right under this Agreement shall not operate as a waiver of any such right.
- P. Headings:** Headings in this Agreement shall not be used to interpret or construe its provisions.
- Q. Severability:** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

ADMINISTRATIVE SERVICES AGREEMENT EXECUTION PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

Metropolitan Life Insurance Company

Address

City State Zip

Date

By: _____

MetLife Officer Name, Title

Sample Customer

Address

City State Zip

Date

By: _____

Officer's Signatory Name, Title

APPENDICES

APPENDIX A: MONTHLY SERVICE FEE

A. Monthly Service Fee [SET FORTH THE MONTHLY SERVICE FEES FOR APPLICABLE CONTRACT PERIODS]

B. Additional Fees [SET FORTH THE ADDITIONAL FEES FOR ADDITIONAL SERVICES, INCLUDING ADDITIONAL REPORTING SERVICES, FOR APPLICABLE CONTRACT PERIODS]

Service Fee Due Date: Payments of the Monthly Service Fee are due to MetLife on the first (1st) day of each calendar month.

APPENDIX B:

PROGRAM DESCRIPTION

The Program Description (PD) of the Program that is subject to this Agreement is set forth in a booklet identified as follows:

[List Name of SPD]

- A. MetLife acknowledges that it has received a copy of this Program Description. The Parties acknowledge, agree and understand that it is incorporated by reference in its entirety as **Appendix B: Program Description**. The Parties acknowledge, agree, and understand that only the portions of the Program Description pertaining to dental care expense benefits administered by MetLife under and subject to the terms and conditions of this Agreement are incorporated by reference in their entirety as **Appendix B: Program Description**. Portions of the Program Description pertaining to any dental expense care benefits except those administered by MetLife are not subject to the terms and conditions of this Agreement.
- B. Customer will continue to furnish to MetLife copies of every revised Program Description and/or every summary of material modifications which are subject to this Agreement within thirty (30) days after they become available, at which time the Parties acknowledge, agree, and understand that they will be incorporated by reference in their entirety as **Appendix B: Program Description**.

APPENDIX C: EXAMINER'S CONFIDENTIALITY AGREEMENT

EXAMINER'S CONFIDENTIALITY AGREEMENT (the "Agreement") entered into by and between _____ (the "Examiner") and Metropolitan Life Insurance Company ("MetLife"). These parties acknowledge and agree as follows:

1. **ASA:** Sample Customer (the "Employer") and MetLife entered into an Administrative Services Agreement (the "ASA") under which all services relate to the Employer's employee welfare benefit program (the "Program"). Pursuant to the ASA, the Employer has retained the Examiner to perform an examination, audit, or other evaluation of the files, books, and/or records of MetLife pertaining to the Program, as detailed in the **Examinations Article** of the ASA (the "Examination").
2. **Consideration:** The Employer has requested that solely for purposes of the Examination, MetLife disclose to the Examiner certain documents, statistical information, and other information of MetLife which is commercially valuable, confidential, proprietary, or trade secret (the "Confidential Information"). MetLife has agreed to such disclosure subject to the terms of this Agreement. There is mutual consideration for this Agreement.
3. **Examination Date:** The Examination shall take place on the date indicated in the **Examinations Article** of the ASA or such other date mutually agreed upon by the parties.
4. **Confidential Information:** All documents and information of MetLife, its agents, subsidiaries, and affiliates, disclosed to the Examiner in connection with the Examination, including all copies thereof, constitutes the Confidential Information disclosed by MetLife to the Examiner on a confidential basis under this Agreement, and must be used by the Examiner only as permitted by this Agreement. The Confidential Information shall not include information: (i) disclosed to the Examiner without restriction prior to the Examination or (ii) generally available to the public prior to the Examination through authorized disclosure.
5. **Title:** Title to the Confidential Information will remain at all times in MetLife and no transfer of any interest therein is granted.
6. **Use:** Examiner (a) shall not use the Confidential Information (deemed to include using, exploiting, duplicating, recreating, modifying, decompiling, disassembling, reverse engineering, translating, creating derivative works, or disclosing the Confidential Information to another person or permitting any other person to do so) except for purposes of the Examination; (b) shall limit use of the Confidential Information only to its authorized employees (deemed to include employees as well as individuals who are agents or independent contractors of the Examiner) who have a need to know for purposes of the Examination; (c) shall not copy the Confidential Information unless express, prior approval of MetLife to do so has been obtained; and, (d) shall, if required by subpoena or other legal process to disclose the Confidential Information, give MetLife reasonable prior notice of such disclosure.
7. **Conflicts of Interest:** The Examiner shall not use the Confidential Information in any manner to further its own interests other than in performing the Examination.
8. **Relinquishment:** The Examiner shall at the conclusion of the Examination relinquish to MetLife all Confidential Information. If during the course of the Examination it is discovered that this Agreement has been breached by the Examiner then all Confidential Information shall be relinquished upon demand by MetLife. The Examiner may retain, subject to the terms of this Agreement, (i) any notes, memoranda or other material prepared by the Examiner for purposes of the Examination that contain or include the Confidential Information (the "Examination Work Product") and (ii) a copy of the Confidential Information only to the extent necessary to defend its Examination Work Product as required by applicable professional standards. Any copies of the Examination Work Product or the

Confidential Information so kept shall be retained and destroyed in accordance with the terms of this Agreement and as required by applicable law, regulation, professional standards or reasonable business practice. The obligation to keep any copy of the Examination Work Product or the Confidential Information in accordance with the terms of this Agreement shall survive for so long as the Examination Work Product or the Confidential Information is retained by the Examiner.

9. **Legal Privacy Requirements:** Certain Confidential Information is subject to legal privacy requirements, including, but not limited to the Health Insurance Portability and Accountability Act ("HIPAA"), a violation of which will cause irreparable harm to MetLife. The Examiner shall comply with all such requirements.
10. **Persons Bound:** This Agreement binds the Examiner, its successors, assignors, agents, employees, subsidiaries, and affiliates and the Examiner agrees that each, prior to accessing the Confidential Information, will have agreed to the terms of this Agreement. This Agreement binds MetLife, its successors, assignors, agents, subsidiaries, and affiliates and the rights given by this Agreement to MetLife also extend to these persons and entities.
11. **Damages and Injunctive Relief:** Unauthorized use of the Confidential Information by the Examiner is a material breach of this Agreement resulting in irreparable harm to MetLife for which the payment of money damages may be inadequate, such damages being difficult to ascertain in any event. It is agreed that MetLife, upon adequate proof of unauthorized use, may immediately obtain injunctive relief in any court of competent jurisdiction enjoining any continuing or further breaches and may obtain entry of judgment for injunctive relief. The Examiner consents to said injunctive relief and judgment. Nothing in this Agreement shall be construed to limit MetLife's remedies at law or equity in the event of a breach.
12. **Term of Agreement:** This Agreement shall remain in full force and effect so long as any Confidential Information remains commercially valuable, confidential, proprietary, and/or trade secret, but in no event less than three (3) years from the date of the Examination.
13. **Assignments:** Neither this Agreement nor the Examiner's rights or obligations hereunder may be assigned without MetLife's prior written approval.
14. **General:** (a) This Agreement is the entire understanding between the parties as to the subject matter hereof. (b) No modification to this Agreement shall be binding upon the parties unless evidenced in writing signed by the party against whom enforcement is sought. (c) Headings in this Agreement shall not be used to interpret or construe its provisions. (d) The alleged invalidity of any term shall not affect the validity of any other term. (e) This Agreement may be executed in counterparts.

The parties have caused their authorized representatives to execute this Agreement.

Metropolitan Life Insurance Company

[Insert Examiner's Name]

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX D: **Letter Agreement regarding Release of Claims Information**

[Date]

Metropolitan Life Insurance Company

[Insert VENDOR]

Dear []:

Reference is made to the Administrative Services Agreement, dated as of [date], between [Insert Customer Name] as [Plan Sponsor and Plan Administrator] ("**Customer**") and Metropolitan Life Insurance Company ("**MetLife**"), as amended (the "**Administrative Services Agreement**"). Capitalized terms not defined in this letter agreement have the meaning set forth in the Administrative Services Agreement.

For purposes of sponsoring and administering the Plan, Customer wishes that MetLife release to [Insert Vendor's Name] ("**Vendor**") certain information as mutually agreed upon by MetLife and Customer related to the Claims received by MetLife in providing the services under the Administrative Services Agreement (the "Claims Information").

Customer hereby directs and authorizes MetLife to release the Claims Information to Vendor electronically in the forms as mutually agreed by Customer and MetLife, but no more frequently than once per calendar week, during the term of the Administrative Services Agreement. MetLife hereby agrees to such release pursuant to such direction and authorization and in reliance on Customer's and Vendor's representations and warranties below.

Customer represents and warrants that such release of the Claims Information is for purposes permitted under applicable law including Health Insurance Portability and Accountability Act of 1996 and privacy and regulation thereto ("**HIPAA**"), and that it does not violate any applicable law including HIPAA by directing and authorizing such release and agrees that MetLife is in no way responsible for the use or disclosure of the Claims Information by Vendor.

Customer agrees to defend, hold harmless, release and indemnify MetLife, its subsidiaries, affiliates, directors, officers, employees, and agents against any and all claims, damages, losses, lawsuits, settlements, judgments, cost penalties and expenses, including reasonable attorneys' fees, arising from or related to the disclosure, re-disclosure or use of the Claims Information in accordance with Customer's request.

Vendor agrees to indemnify, defend, and hold MetLife and its officers, directors, employees, agents and other representatives harmless from any actual or threatened legal or administrative action, claim, liability, penalty, fine, assessment, lawsuit, litigation, or other loss, expense or damage, including without limitation reasonable attorneys' fees and costs that MetLife may incur as a result of Vendor's use and storage of the Claims Information.

Vendor acknowledges and agrees that the unauthorized disclosure or use of Claims Information will cause irreparable harm and significant injury to MetLife which will be difficult to measure with certainty or to compensate through money damages. Accordingly, Vendor agrees that MetLife may seek injunctive relief or other equitable relief in the event of any breach by Vendor of any part or parts of this Agreement in addition to such other remedies as may be available to MetLife at law. If MetLife has a reasonable belief that Claims Information is being disclosed in violation of this Agreement, upon Vendor's receipt of

written notice of such belief, Vendor and MetLife shall cease disclosing Claims Information until Vendor performs an investigation of the matter, and the matter is resolved to the satisfaction of the parties hereto.

This letter agreement shall remain in full force and effect until the earlier of (a) the termination of the Administrative Services Agreement or (b) five (5) days following receipt of written notice by Customer or MetLife from the other of the other's intention to terminate this letter agreement; provided, however, that 5th and 6th paragraphs of this letter agreement shall survive the termination of this letter agreement.

Please indicate your agreement with the foregoing by signing and returning the enclosed copy of this letter.

Very truly yours,

Name:
Title:

Accepted and agreed:

Metropolitan Life Insurance Company

Name:

Title:

Accepted and agreed:

[Vendor]

Name:

Title: